

Consumer's Use Tax

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Web site: www.revenue.state.ne.us



The purpose of this information guide is to explain what consumer's use tax is, when the tax applies, and what return to file to report and pay the tax. The guide is updated periodically to reflect statutory changes.

Overview

Consumer's use tax is a complement to the Nebraska sales tax. Consumer's use tax is due **ONLY** if Nebraska sales tax was not paid. It is imposed at the same rate and on the same transactions as the sales tax. Certain locations in Nebraska have a local sales tax in addition to the state sales tax. Local consumer's use tax is due whenever Nebraska consumer's use tax is owed.

Consumer's use tax is remitted directly to the state by the purchaser. Listed below are a few examples of transactions that are subject to consumer's use tax.

- Items purchased from an out-of-state mail order catalog, by telephone, or via the Internet;
- Items purchased out-of-state and delivered or distributed to a home or business in Nebraska;
- Items or taxable services purchased in Nebraska without payment of appropriate sales tax.
- Items purchased tax free for resale that are subsequently withdrawn from inventory for business or personal use, including items that will be given away as gifts or donations.

Taxable Purchases

Out-of-State Purchases. When an item is purchased from an out-of-state retailer who did not collect Nebraska sales tax and the item is brought into Nebraska, consumer's use tax is due since Nebraska sales tax was not paid.

Credit for Tax Paid In Another State. When sales or use tax is paid in another state on an item that is taxable in Nebraska, a credit for the amount of properly paid tax in the other state can be applied against the total Nebraska and local consumer's use tax liability. If the credit is **equal to or greater** than the tax due in Nebraska, no consumer's use tax is due. If the credit is **less** than the tax due in Nebraska, the difference is due. The credit is first applied to Nebraska consumer's use tax. Any unused portion of the credit is then applied to any local consumer's use tax.

In-State Purchases. In the event that a retailer does not collect the Nebraska sales tax, consumer's use tax is due since Nebraska sales tax was not paid.

Inventory

Inventory purchased for resale may be purchased tax-free. Whenever tax-free inventory is subsequently used for personal or business purposes, consumer's use tax is due on the cost of the item.

Donations

Consumer's use tax is due on items that are withdrawn from inventory for the purpose of being given away or donated. The tax is calculated at the rate in effect at the inventory location.

Consumer's use tax is **not** due on services which are normally taxable, when the service provider is the one donating or giving away the service.

Consumers' Responsibilities

Nebraska consumers, individuals or businesses, must remit use tax whenever a taxable item or service is purchased and Nebraska sales tax was not paid, or when using an inventory item on which no tax was paid. Businesses or individuals that are not licensed for sales or use tax must submit a Nebraska Tax Application, Form 20. There is no fee for the license.

Remitting the Tax. Consumer's use tax is remitted directly to the department using one of the following returns:

Nebraska and Local Sales and Use Tax Return, Form 10. This return is used by Nebraska licensed retailers. It is a dual purpose form that allows the retailers to remit the sales tax they collect from their customers, as well as any consumer's use tax they owe.

Example: A retail paint store withdraws a gallon of paint from inventory and uses it to repaint its office. Consumer's use tax is due on the store's cost of the paint since it was withdrawn from tax-free inventory and the store is considered the consumer of the paint.

Retailers report and remit their consumer's use tax at the same time they file and remit sales tax they have collected from their customers. If retailers have no consumer's use tax to report, they **MUST** put zeros on the consumer's use tax lines of Form 10 to indicate no use tax is due for that filing period.

Nebraska and Local Consumer's Use Tax Return, Form 2. This return is used by businesses that are not Nebraska licensed retailers to report their consumer's use tax liability.

Example: An accounting firm buys a computer from an out-of-state supplier and is not charged Nebraska sales tax. Consumer's use tax is due since Nebraska sales tax was not paid.

Form 2 is filed monthly, quarterly, or annually based on the consumer's annual use tax liability. If the annual liability is:

- ✓ More than \$3,000 — returns are filed monthly;
- ✓ \$900 to \$3,000 — returns are filed quarterly; and
- ✓ Less than \$900 — returns are filed annually.

Nebraska and Local Individual Consumer's Use Tax Return, Form 3. This return is used by individuals to report their consumer's use tax liability.

Example: An individual purchases a coat from an out-of-state mail order catalog company and is not charged Nebraska sales tax. Consumer's use tax is due since Nebraska sales tax was not paid.

Form 3 is filed monthly, quarterly, or annually based on the consumer's annual use tax liability. If the annual liability is:

- More than \$3,000 — returns are filed monthly;
- \$900 to \$3,000 — returns are filed quarterly; and
- Less than \$900 — returns are filed annually.

Exemptions

Transactions that are exempt from Nebraska sales tax are also exempt from Nebraska consumer's use tax.

The following list indicates some examples of items that are exempt from consumer's use tax.

- ✓ Qualified agricultural machinery and equipment directly used in commercial agriculture;

- ✓ Gasoline and aircraft fuels;
- ✓ Prescription medicines; and
- ✓ Garden seeds or plants that produce food for human consumption (does not include flower seeds).

Nebraska Sales and Use Tax Regulation 1-012, Exemptions, provides a detailed listing of exempt purchases. In addition, the following exemptions from consumer's use tax also apply:

- Transactions where tax was properly paid in another state at a rate equal to or greater than the rate in Nebraska;
- Transactions where the item purchased was first used for its intended purpose in another state (this does not apply to motor vehicles, motor boats, or airplanes);

Example: A printer with locations in both Nebraska and Iowa purchases a new copier in Iowa and installs it at the Iowa location and uses it there for two months. The printer then brings the copier to the Nebraska location where it remains. Nebraska consumer's use tax is not due since the copier was purchased and first used in Iowa.

- Transactions where the item was purchased in another state, stored but not used in any fashion in Nebraska, and subsequently taken to and used in another state.

Direct Pay Purchases. Companies making tax-free purchases through use of a Direct Pay Permit must remit the tax by the 25th day of the month following the date of purchase. The tax is remitted as consumer's use tax on Form 10 or Form 2 as applicable.

Companies making at least \$3 million in taxable purchases each year may apply to the department for a Direct Payment Permit which allows companies to remit the tax on certain purchases in lieu of paying sales tax to the retailer at the time of purchase (see Regulation 1-097 for more information). Qualified purchasers **MUST** give the seller a copy of their Direct Payment Permit to support their tax-free purchases.

Motor vehicles and certain other items cannot be purchased tax free using the Direct Payment Permit. Sales tax on motor vehicles must be paid directly to the county treasurer within thirty days of the purchase date.

Interest and Penalty

Interest on any unpaid tax is assessed at the statutory rate from the due date until payment is received. A penalty may be assessed for failure to timely file a return and pay all tax when due.

Enforcement

Nebraska is a member of the Midwest Border States Compact. Member states have mutual tax enforcement agreements that provide for the exchange of information regarding purchases in one state that are delivered into another. In addition, the compact is encouraging out-of-state businesses to register and collect Nebraska sales taxes voluntarily as a service to their Nebraska customers.

Taxpayer Assistance. For additional information, please contact the Nebraska Department of Revenue, P.O. Box 94818, Lincoln, Nebraska 68509-4818, or call 1-800-742-7474 (toll free in NE and IA) or 1-402-471-5729.